

Monitor and Competition

Alex Scott-Samuel, University of Liverpool A.Scott-Samuel@liverpool.ac.uk

Despite government claims of radical changes in the role of Monitor following the 'listening exercise' (reference 1), its functions relating to competition continue to take precedence over all its other responsibilities.

The current Bill can be viewed [here](#):

The relevant clauses are in Part 3, Chapter 2 (Competition), Clause 70, subclauses (2) and (3):

(2)

Subject to subsection (3), sections 59 and 62 (general duties of Monitor) do not apply in relation to anything done by Monitor in the carrying out of its functions by virtue of section 68 or 69.

(3)

In the carrying out of any functions by virtue of section 68 or 69, Monitor may nevertheless have regard to any of the matters in respect of which a duty is imposed by section 59 or 62 if it is a matter to which the Office of Fair Trading is entitled to have regard in the carrying out of those functions.

The key point however is that sections 59 and 62 are not about things that the OFT is supposed to do: they are the new, so-called positive elements of Monitor's role – such as promoting integration - inserted after the 'pause'. And they are all irrelevant, according to (2), when Monitor comes to applying sections 68 and 69, which concern the Competition Act 1998 and the Enterprise Act 2002.

Thus, Monitor's renamed function of preventing anti-competitive behaviour in the provision of services overrides its other functions.

Reference

1 Reynolds L, Scott-Samuel A, McKee M. Why the amended Health Bill still creates a worrying outlook for the NHS. Health Service Journal, 22 September 2011. <http://tinyurl.com/68xoy9n>